

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

IN THE MATTER OF: )  
American Cyanamid Site )  
Bound Brook, Somerset County, New Jersey) )  
Wyeth Holdings Corporation, )  
Respondent )

ADMINISTRATIVE SETTLEMENT  
AGREEMENT AND ORDER ON  
CONSENT FOR REMOVAL ACTION

U.S. EPA, Region 2  
Docket No. CERCLA- 02-2011-2015

Proceeding Under Sections 104, 106(a),  
107 and 122 of the Comprehensive  
Environmental Response, Compensation, and  
Liability Act, as amended, 42 U.S.C.  
§§ 9604, 9606(a), 9607 and 9622

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## **I. JURISDICTION AND GENERAL PROVISIONS**

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Wyeth Holdings Corporation ("Respondent"). This Settlement Agreement provides for the performance of a removal action by Respondent at or in connection with the American Cyanamid Company Site (the "Site"), approximately 435 acres in size, mostly situated within Bridgewater Township although the official Site address is Easton Turnpike, Bound Brook, Somerset County, New Jersey.

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622. This authority was delegated to the Administrator of the EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (1987), and further delegated to the Regional Administrators on September 13, 1987, by EPA Delegation No. 14-14-C. This authority was further redelegated by the Regional Administrator of EPA, Region 2, to the Director of the Emergency and Remedial Response Division, by EPA Regional Delegation 14-4-D on November 23, 2004.

3. EPA has notified the State of New Jersey (the "State") of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. EPA and Respondent recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement Agreement do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of facts, conclusions of law, and determinations in Sections IV and V of this Settlement Agreement. Respondent agrees to comply with and be bound by the terms of this Settlement Agreement and further agrees that it will not contest the basis or validity of this Settlement Agreement or its terms.

## **II. PARTIES BOUND**

5. This Settlement Agreement applies to and is binding upon EPA and upon Respondent and its successors and assigns. Any change in ownership or corporate status of the Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter the Respondent's responsibilities under this Settlement Agreement.

6. Respondent is liable for carrying out or causing to be carried out all activities required by this Settlement Agreement.

7. Respondent shall ensure that its contractors, subcontractors, and representatives involved in performing the Work (as defined below) receive a copy of this Settlement Agreement and

comply with this Settlement Agreement. Respondent shall be responsible for any noncompliance with this Settlement Agreement.

### **III. DEFINITIONS**

8. Unless otherwise expressly provided in this Settlement Agreement, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 - 9675.

b. The term "day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

c. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXX.

d. "EPA" shall mean the United States Environmental Protection Agency and its successor departments, agencies or instrumentalities.

e. "NJDEP" shall mean the New Jersey Department of Environmental Protection and any successor departments or agencies of the State.

f. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other deliverables pursuant to this Settlement Agreement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 53 (site access) (including, but not limited to, costs and attorneys fees and any monies paid to secure access, including, but not limited to, the amount of just compensation), and Paragraph 63 (emergency response), and Paragraph 88 (work takeover).

g. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

h. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of

CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

i. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Section XXX). In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

j. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral or an upper or lower case letter.

k. "Parties" shall mean EPA and Respondent.

l. "RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

m. "Respondent" shall mean Wyeth Holdings Corporation.

n. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

o. "Site" shall mean the American Cyanamid Company Superfund Site, encompassing approximately 435 acres, mostly situated within Bridgewater Township although the official Site address is Easton Turnpike, Bound Brook, Somerset County, New Jersey. The Site is depicted generally in the photographs attached in Appendix A. Work to be performed under this Settlement Agreement will primarily take place in the area of the Site that is bounded by the CSX Railroad right-of-way to the north, Middle Brook to the east, the Raritan River to the south, and the east branch of Cuckhold's Brook to the west.

p. "State" shall mean the State of New Jersey.

q. "United States" shall mean the United States of America and each department, agency and instrumentality of the United States, including EPA.

r. "Waste Material" shall mean 1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); 3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

s. "Work" shall mean all activities Respondent is required to perform under this Settlement Agreement.

#### **IV. FINDINGS OF FACT**

9. From 1915 to 1999 the Site was used by various companies for the manufacturing of

rubber chemicals, dyes, pigments, chemical intermediates, fungicides, petroleum based products and pharmaceuticals. The facility was originally built in 1915 by the Calco Chemical Company to manufacture intermediate chemicals and dyes. In 1929, the facility was purchased by the American Cyanamid Company, and the plant was expanded over the next 60 years. The manufacture of pharmaceutical intermediates was initiated at the facility in the 1930s and continued until 1999.

10. The American Home Products Corporation acquired American Cyanamid in November 1994. All organic chemical and dye production at the facility was phased out by the early 1980s. The manufacture of bulk pharmaceuticals continued throughout the 1990s. All manufacturing operations at the Site ceased in 1999.

11. In 2002, American Home Products changed its name to Wyeth. The legal entity associated with the ownership of the Bound Brook property changed its name from American Cyanamid Company to Wyeth Holdings Corporation, a wholly-owned subsidiary of Wyeth. Wyeth is now reorganized as Wyeth LLC.

12. Pfizer Inc. acquired Wyeth and its subsidiaries on October 15, 2009. The Site is titled to Wyeth Holdings Corporation.

13. The majority of the Site is located in the southeastern section of Bridgewater Township, Somerset County, New Jersey. The property encompasses approximately 435 acres south of the New Jersey Transit (NJT) commuter rail line adjacent to the Raritan River. The Site is generally bordered to the north by the TD Bank Ballpark Stadium, NJT, and commercial retail property located largely on Main Street, to the east by the commercial warehouse property and Interstate Highway 287, to the south by the Raritan River and the New Jersey American Water Company and to the west by the Somerset Raritan Valley Sewerage Authority ("SRVSA") publicly owned treatment works. A residential area lies to the northwest of the Site. The Cuckhold's Brook transects the property and drains into the Raritan River. In addition, a small parcel of the Site is situated between the Conrail freight line and the Raritan River in the Borough of Bound Brook. A perimeter fence surrounds the majority of the Site and "No Trespassing" signs are posted. Twenty-four hour security is maintained at the Site.

14. The Site was listed on the National Priority List ("NPL") on September 1, 1983.

15. The Site as originally listed on the NPL encompassed approximately 575 acres of land. On December 29, 1998, EPA deleted the northern 140 acres of the Site, known as the Hill Property, from the NPL and that land was made available for redevelopment.

16. In 1982 and 1988, American Cyanamid entered into Administrative Consent Orders ("ACO") with NJDEP for the investigation and remediation of the Site. The 1988 ACO was amended in 1994.

17. By letter dated March 17, 2009, NJDEP informed Respondent that it was transferring oversight and regulatory lead of the Site to EPA and would hold in abeyance the requirements of

the NJDEP ACOs, with limited possible exceptions, as long as Respondent implemented the Site investigation and cleanup under EPA oversight.

18. On November 4, 2009, Respondent submitted a Site-wide Feasibility Study ("FS") to EPA which evaluated remedial alternatives for the Site, with the exception of Impoundments 1 and 2. Although Impoundments 1 and 2 are not addressed by the FS, groundwater downgradient from these impoundments is addressed by the FS and the Work under this Settlement Agreement. The FS was reviewed by EPA Region 2, the EPA National Remedy Review Board, NJDEP, the Township of Bridgewater and CRISIS, the community group providing technical oversight via EPA grant funding on behalf of local residents. The FS was provided to the National Remedy Review Board for review on March 16, 2010. EPA issued a letter to the Respondent on October 14, 2010 requesting revisions to the FS and proposed Site-wide remedy. Respondent submitted a revised FS and proposed Site-wide remedy to EPA on December 17, 2010 for review.

19. The revised FS, currently under consideration by EPA includes, but is not limited to, remedial alternatives such as constructing a groundwater collection system along the Raritan River and Cuckold's Brook on a fast-track basis, capping of impacted soil and impoundments and ecological risk assessment to determine the fate of floodplain impoundments.

20. A Focused FS ("FFS") has been initiated for Impoundments 1 and 2. It is anticipated that a FFS for Impoundments 1 and 2 will be submitted to EPA in 2012.

21. Four Records of Decision ("RODs") have been issued regarding the Site. In 1993 an Operable Unit 01 ROD provided for the remedy of Impoundments 11, 13, 19 and 24. Soils containing Waste Materials found in Impoundments 11 and 19 were excavated, subsequently treated and placed into the onsite Impound 8 Facility. The Impound 8 Facility was constructed and used as a triple-lined hazardous waste landfill that also has served as a Resource Conservation and Recovery Act-Corrective Action Management Unit ("RCRA-CAMU") to receive treated wastes from CERCLA impoundments pursuant to prior RODS. In 1996 an Operable Unit 02 ROD provided for the remedy of Impoundments 15, 16, 17 and 18 and a separate ROD provided for the remedy of Operable Unit 06 (Hill Property Redevelopment). In 1998 an Operable Unit 03 ROD provided for the remedy of Impoundments 1, 2, 3, 4, 5, 14, 20 and 26. Explanations of Significant Differences were subsequently issued for Impoundments 14, 15, 16 and 20 to allow for iron oxide recycling for Impoundments 15 and 16 and solidification and landfilling in Impound 8 for Impoundments 14 and 20. Currently there are ten impoundments to be remediated (1, 2, 3, 4, 5, 13, 15, 16, 17 and 24). The following six impoundments have been remediated: 11, 14, 18, 19, 20 and 26. No remediation is planned for the following impoundments: 9, 10, 12, 21, 22 and 23.

22. A partial groundwater containment system was constructed and continues operating on the Site. The system consists of two extraction wells installed into the bedrock. The groundwater extraction well system has been operating for approximately 30 years to control the migration of contaminated groundwater through continuous pumping. This system operates 24 hours a day seven days a week and pumps a minimum of 650,000 gallons of groundwater per day that is subsequently treated offsite at the neighboring SRVSA municipal wastewater treatment system.

SRVSA treats approximately 20 to 25 million gallons of waste water each day and discharges into the Cuckhold's Brook. SRVSA is currently constructing a new outfall pipe directly to the Raritan River with plans to cease discharge to Cuckhold's Brook by mid-2011.

23. There are a number of waste storage and disposal areas, as well as areas of soil and groundwater contamination, at the Site. Twenty-seven surface impoundments were constructed on the Site for various uses, including for storage of wastes generated by past manufacturing operations, for storage of sludge from historic water and wastewater treatment operations, and river water storage. Approximately one third of the surface area of the Site is covered with impoundments.

24. Impoundments 1 and 2 are located approximately 700 feet north of the Raritan River. See Appendix A. Each impoundment is approximately two acres in size and contains an acid tar sludge generated from a manufacturing process which produced benzene and other naphtha solvent by refining light oil which was a byproduct of coke production. The light oil was washed with sulfuric acid to remove the olefins and then with formaldehyde to remove thiophene before it was fractionated. There are approximately 45,000 cubic yards of the acid tar sludge in both impoundments. Approximately six million gallons of oil have already been removed from Impoundments 1 and 2. The remaining acid tar sludge is a combination of viscous rubbery and hard crumbly materials with a strong foul odor. The pH of this material is very acidic (pH less than 1 standard unit). This material has a BTU value of 10,000 to 20,000 BTU/pound. The vertical thickness of the waste in Impoundments 1 and 2 is approximately eight to ten feet on average.

25. The details of how Impoundments 1 and 2 were constructed are not well known. Respondent alleges that construction drawings indicate up to 1.5 feet of natural clay was placed along the bottom of the impoundments and the interior of the berms. Impoundment 1 has a synthetic liner covering the surface of the impoundment. Earthen berms are constructed around the perimeter of and divide Impoundments 1 and 2. The berms also function to contain a water cap which covers the surface of Impoundments 1 and 2. The water caps suppress the amount of volatile organic compounds which might otherwise migrate from each impoundment into the atmosphere. However, the water caps covering Impoundments 1 and 2 are reportedly contaminated with volatile organic compounds in the part per million range.

26. The earthen berms surrounding Impoundments 1 and 2 will reportedly protect the impoundments from a 25-year flood.

27. The depth to shallow groundwater south of Impoundments 1 and 2 is approximately five feet. Sampling and analysis of the groundwater collected from overburden monitoring wells and piezometers immediately south of Impoundments 1 and 2 (and in some cases immediately adjacent to Impoundments 1 and 2) and north of the Raritan River indicated that benzene was detected above the New Jersey Ground Water Quality Standards ("NJGWQS") (ranging from 0.22 mg/L to 388 mg/L) in each of the monitoring wells sampled during the Remedial Investigation for Groundwater (Feb 2006), the Supplemental Remedial Investigation for Groundwater (Apr 2007) and an October 2010 sampling event. In addition, Toluene was detected in monitoring wells/



piezometers 01-MW-03, FLOD-W1S, and PZ-12-4 above NJGWQS (ranging from non-detect to 29.3 mg/L); 1,2-dichlorobenzene in monitoring wells/piezometers 01-MW-01, 01-MW-03, FLOD-W1S, and PZ-12-4 was detected at concentrations above NJGWQS (ranging from 0.00045 mg/L to 9.95 mg/L); naphthalene and nitrobenzene in monitoring wells/piezometers 01-MW-03, FLOD-W1S, and PZ-12-4 were detected at concentrations above NJGWQS (ranging from 0.00047 mg/L to 4.46 mg/L and from non-detect to 5.95 mg/L, respectively); concentrations of aluminum, iron, and manganese were detected above NJGWQS (ranging from 0.20 mg/L to 349 mg/L, from 1.69 mg/L to 629 mg/L, and from 0.38 mg/L to 28.5 mg/L, respectively) in each of the monitoring wells sampled.

28. In addition, wells and piezometers adjacent to Impoundments 1 and 2 were evaluated for the presence of non-aqueous phase liquid ("NAPL"). NAPL was observed and sampled in one piezometer (PZ-12-4).

29. As reported in the Remedial Investigation for Groundwater (Feb 2006) and the Supplemental Remedial Investigation for Groundwater (Apr 2007), groundwater flows south in the proximity of Impoundments 1 and 2. Groundwater studies will be undertaken to confirm that the groundwater flows past Impoundments 1 and 2 and continues toward the Raritan River.

30. On December 6, 2010, investigations were implemented by Respondent's contractors to evaluate possible discharges of groundwater to surface water bodies in the vicinity of Impoundments 1 and 2. Evaluations included a seep reconnaissance, well inspections for NAPL, and a groundwater/surface water temperature evaluation in standing water south and east of Impoundments 1 and 2. During these evaluations, four potential groundwater discharges (seeps) to the Raritan River were observed. Three of the potential seeps were observed below the Raritan River waterline based upon the observation of cloudy water. No samples were collected from these three locations. The fourth seep was observed discharging along an approximate 65-foot section of the river bank. From west to east the seeps were designated FLODSEEP01, FLODSEEP02, FLODSEEP03 and FLODSEEP04.

31. On December 6, 2010, Respondent's contractor collected a surface water sample (FLODSEEP04) from the Raritan River immediately adjacent to a seep in the bank of the River. The purpose of the sampling event was to collect as much material emanating from the seep with as little dilution from the River water as possible. The aforementioned seep is down gradient of Impoundments 1 and 2. The samples were received by the laboratory on December 8, 2010 and volatile, semivolatile, target analyte list, alkalinity, chloride, hardness, salinity and sulfate analysis were conducted. A summary of the analytical results for FLODSEEP04 are provided in Table 1 below.

**Table 1:** FLODSEEP04 Analytical Results

Analyte	Concentration in Micrograms per Liter (ug/L)	NJ Groundwater Criteria in Micrograms per Liter (ug/L)	NJ Surface Water Criteria in Micrograms per Liter (ug/L)
Benzene	20200	1	0.15
Chlorobenzene	8.3 J	50	210
1,2-Dichlorobenzene	320	600	2,000
1,3-Dichlorobenzene	3.5 J	600	2,200
1,4-Dichlorobenzene	13.8	75	550
Ethylbenzene	29.2	700	530
Isopropylbenzene	48.3	700	-
1,3,5-Trimethylbenzene	8.4 J	-	-
o-Xylene	37.6	-	-
Xylene (total)	37.6	1000	-
Phenol	10.4	2000	10,000
Aniline	2.2	6	-
Isophorone	0.90 J	40	35
2-Methylnaphthalene	1.2	-	-
Naphthalene	63	300	-
Aluminum	20200	200	-
Arsenic	5.7	3	0.017
Beryllium	6.6	1	6
Calcium	90100	-	-
Chromium	14.4	70	a
Cobalt	56.7	-	-
Copper	15.4	1300	a
Iron	65300	300	a
Lead	4.1	5	5
Magnesium	34300	-	-
Manganese	4690	50	-
Mercury	0.31	2	0.05
Nickel	123	100	500
Sodium	61700	50000	-
Zinc	161	2000	7,400

J = estimated value

a = hardness based formula calculation

32. Impoundments 1 and 2 are believed to be sources of Waste Materials to the groundwater, including benzene, which are migrating and entering into the Raritan River.

33. Exposure to the various hazardous substances which are present at the Site, as noted in the above paragraphs, by direct contact, inhalation, or ingestion may cause a variety of adverse human health effects.

#### **V. CONCLUSIONS OF LAW AND DETERMINATIONS**

34. Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA has determined that:

- a. The Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
- b. Sampling results from FLODSEEP 4, provided in the Findings of Fact above, identified "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
- c. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
- d. Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for performance of the response action and for response costs incurred and to be incurred at the Site. Respondent is the "owner" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).
- e. The conditions described in Paragraphs 27 through 31 of the Findings of Fact above constitute an actual or a threat of "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
- f. The removal action required by this Settlement Agreement is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement Agreement, will be consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.
- g. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"). These factors include, but are not limited to, the following conditions:
  - i. Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances, or pollutants, or contaminants;
  - ii. Actual or potential contamination of drinking water supplies or sensitive ecosystems; and

iii. Weather conditions that may cause hazardous substances, or pollutants, or contaminants to migrate or be released.

35. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. §9606(a).

36. The actions required by this Settlement Agreement are necessary to protect the public health or welfare or the environment, are in the public interest, and are consistent with CERCLA and the NCP, 40 C.F.R. Part 300.

37. EPA has determined that a removal action at this Site is necessary to address the immediate threat to human health and the environment posed by the Waste Materials at the Site.

#### **VI. SETTLEMENT AGREEMENT AND ORDER**

38. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Settlement Agreement, including, but not limited to, all attachments to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

#### **VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR**

39. Respondent has retained Quantum Management Group, Inc. ("QMG") as overall Site project management, and O'Brien & Gere Engineers to perform the Work. If Respondent changes its contractors when performing the Work, it shall notify EPA of the name(s) and qualifications of such contractor(s) within 7 days of such change. Respondent shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least 7 days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. If EPA disapproves of a selected contractor, Respondent shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within 10 days of EPA's disapproval.

40. Respondent has designated Roy Dane of QMG to serve as Project Coordinator and shall be responsible for administration of all actions by Respondent required by this Settlement Agreement. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, email, and qualifications within 5 days following EPA's disapproval. Receipt by

Respondent's Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by the Respondent.

41. EPA has designated Thomas Budroe of the Region 2 Emergency and Remedial Response Division, Removal Action Branch, Removal Support Team, as its On-Scene Coordinator ("OSC"). Except as otherwise provided in this Settlement Agreement, Respondent shall direct all submissions required by this Settlement Agreement to the OSC at 2890 Woodbridge Ave., Building 205, Edison, NJ 08837 or by email at budroe.thomas@epa.gov.

42. EPA and Respondent shall have the right, subject to Paragraph 40, to change their respective designated OSC or Project Coordinator. If Respondent changes its Project Coordinator, it shall notify EPA 5 days before such a change is made and shall submit to EPA the designated Project Coordinator's name, address, telephone number, email, and qualifications. The initial notification may be made orally, but shall be promptly followed by a written notice.

### **VIII. WORK TO BE PERFORMED**

43. Respondent shall perform, at a minimum, all actions necessary to implement the Work required under this Settlement Agreement and employ, to the extent possible, EPA Region 2's Clean and Green Policy (available at [www.epa.gov/region02/superfund/green\\_remediation/policy.html](http://www.epa.gov/region02/superfund/green_remediation/policy.html)). The actions to be implemented generally include, but are not limited to, the following which shall be documented in a Work Plan:

a. Conduct a Pre-Design Investigation ("PDI") designed to: (i) obtain relevant information necessary to design and construct the removal system described in subparagraph 43.b. below (the "Removal System"); and (ii) identify any necessary pretreatment requirements with the intent of discharging the collected water to the SRVSA municipal wastewater treatment system. The PDI may include geotechnical borings along the Removal System alignment, groundwater pump tests to determine hydraulic conductivity and groundwater flow rates, and sampling to determine pretreatment requirements. A plan to conduct this PDI shall be submitted as a part of the Work Plan discussed in Paragraph 44.

b. Design and construct a Removal System which will block, intercept and capture or otherwise adequately address to EPA's satisfaction, (i) the known seeps identified in Paragraph 30, (ii) any other seeps or discharges discovered during construction of the Removal System, and (iii) those seeps or discharges identified in the studies required in sub-Paragraph 43.c. and 43.d., that are found to be discharging to the Raritan River, Cuckhold's Brook or from the Route 287 Pond to the Raritan River and Middle Brook and exceed either the New Jersey Groundwater Criteria or New Jersey Surface Water Criteria listed in Paragraph 31. The system shall be engineered and constructed to withstand a 100 year flood without sustaining significant damage.

c. Conduct a study in the area of the Site that is bounded by the CSX Railroad right-of-way to the north, Middle Brook to the east, the Raritan River to the south, and the east branch of Cuckhold's Brook to the west to determine if contaminated groundwater within that area is

migrating through the Site bedrock and is subsequently discharging to the Raritan River, Cuckhold's Brook or the Route 287 Pond. A plan to conduct this study shall be submitted as a part of the Work Plan discussed in Paragraph 44.

d. Conduct a study in the area of the Site that is bounded by the CSX Railroad right-of-way to the north, Middle Brook to the east, the Raritan River to the south, and the east branch of Cuckhold's Brook to the west to determine the hydrodynamics of the contaminated groundwater flow in the overburden in that area and if any other seeps or discharges exist in that area, in addition to the four already identified, which are discharging contaminated groundwater to the Raritan River, Cuckhold's Brook or the Route 287 Pond. A plan to conduct this study shall be submitted as a part of the Work Plan discussed in Paragraph 44.

e. Treat and/or dispose of the contaminated groundwater captured by the Removal System in a manner which meets all federal, state and local requirements. Wastes generated during the construction of the Removal System (the "System Construction Phase") shall be managed as follows:

(i) Soils excavated during the System Construction Phase shall be used as backfill in the same area from which it was excavated if analytical results indicate the soils meet applicable local, state and federal standards.

(ii) Excess soil spoils generated during the System Construction Phase are proposed by the Respondent to be disposed of in the on-Site Impound 8 Facility landfill, which has been constructed and used as a triple-lined hazardous waste landfill that also has served as a Resource Conservation and Recovery Act-Corrective Action Management Unit ("RCRA-CAMU") to receive treated wastes from CERCLA impoundments pursuant to prior RODS. Proposed soil treatment criteria and operational conditions for the use of Impound 8 shall be submitted as a part of the Work Plan discussed in Paragraph 44. EPA will determine whether the excess soil spoils may be disposed of in the Impound 8 Facility. If the excess soil spoils cannot be disposed of in the Impound 8 Facility, the Respondent shall dispose of this material offsite pursuant to Paragraph 51.

(iii) Water generated from dewatering activities during the System Construction Phase shall be added to the existing water cap on the surface of Impoundments 1 and 2 provided that the dewatering water shall first be treated to applicable standards and that the quantity of water added to the water cap shall not increase the depth of the water cap by more than six inches unless Respondent can demonstrate to EPA's satisfaction that a greater increase will not significantly increase the rate of leakage from the impoundments to the groundwater. If the water, after treatment to applicable standards, cannot be added to the water cap, it shall be transported or otherwise conveyed for treatment/disposal.

f. Provide an Operation and Maintenance Plan which includes a maintenance schedule for the Removal System. The Operation and Maintenance Plan shall be submitted within 15 days of the completion of the System Construction Phase and shall:

(i) Include a contingency plan to respond to and take immediate action to repair damage to the Removal System in the case of damage due to flooding, adverse weather events or other natural or unnatural causes. Should it be demonstrated that operation of the Removal System is not required to address the discharges identified in Paragraph 43.b. during a 100 year flood event or greater, a shutdown of system operations will be permissible until flood waters recede.

g. Conduct a study to demonstrate that the Removal System is functioning as designed and is mitigating all identified discharges. A plan to conduct this study shall be submitted as part of the Operation and Maintenance Plan discussed in Paragraph 43.f.

h. Prepare a long-term monitoring plan to ensure that the Removal System continues to operate as designed and addresses the discharges identified in Paragraphs 43.b., c., and d. The monitoring program shall include, at a minimum, the sampling locations, analytical parameters and a schedule indicating the frequency of activities.

44. Work Plan Contents. Respondent shall submit to EPA for approval a draft Work Plan for performing the Work generally described in Paragraph 43 and include an expeditious schedule for conducting the Work. The Work Plan shall also include the following:

a. A Transportation and Disposal Plan outlining procedures for transporting and disposing of all hazardous substances, hazardous waste and other solid waste generated during the work. These procedures shall include measures taken to mitigate potential spills during the work. This plan will include identification of proposed disposal facilities for all waste streams. The Transportation and Disposal Plan shall address the proper disposal of site wastes to treatment, storage and disposal facilities and/or recycling facilities in compliance with RCRA, 42 U.S.C. §§6901-6991, and Section 300.440 of the NCP. Excess soil spoils generated during the Work may be disposed in the on-site Impound 8 Facility landfill pursuant to Paragraph 43.e (ii). Treated groundwater may be added to the existing water cap on the surface of Impoundments 1 and 2 pursuant to Paragraph 43.e (iii).

b. A plan to ensure that all fill material used to backfill excavated areas is free from chemical and radiological contamination and is consistent with background soil levels for the Bridgewater/Bound Brook, New Jersey area. Every load of backfill material must meet current NJDEP residential direct contact soil remediation standards, which became effective June 2, 2008, and amended on November 4, 2009, and be certified by the generator/agent as clean fill consistent with NJDEP regulations, including NJAC 7:26E-2. All backfill material shall be screened for radiological contamination to ensure it does not contain radioactive materials in excess of ambient background concentrations found at the Site. This plan shall also include a description of the area where the fill will be placed.

c. Maps and/or diagrams depicting, to the extent known and determined, all work and safety zones, including but not limited to: exclusion zones, contaminant reduction zones,

staging and sampling areas, waste segregation areas, and the command post, all located from fixed reference points and plotted to scale.

d. A description of any potential treatment or pre-treatment system used to treat wastes generated during the removal action and/or generated during the ongoing operation of the system, required in Paragraph 43.b., including collected groundwater, prior to their discharge, movement or shipment off the Site. The description shall include diagrams illustrating the construction and treatment process, system capacities, and any process wastes generated by the system.

e. A description of any potential dewatering activities, should it prove necessary. The description must include a description of how the water will be stored during removal of the soil as well as a description of the final disposition of the water.

f. A plan and a description which at a minimum includes:

i. A list of the regulations which are relevant to work conducted in a wetland area;

ii. A map delineating the wetland areas which will be affected by the removal action work;

iii. Measures that will be taken prior to and during the removal action to meet the appropriate regulations; and

iv. A plan containing specific information regarding the restoration of any and all wetland areas affected during the course of the removal action work.

g. A soil erosion and sediment control plan addressing engineering controls which will be instituted during excavation and other relevant activities throughout the various stages of the Work. This plan shall include diagrams illustrating the location and description of the engineering controls anticipated for use in relation to the Site features of relevance.

#### 45. Work Plan Implementation.

a. Within 30 days after the Effective Date, Respondent shall submit to EPA for approval a draft Work Plan for performing the removal action described in Paragraphs 43 and 44, above.

b. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan in whole or in part. If EPA requires revisions, Respondent shall submit a revised draft Work Plan within 7 days of receipt of EPA's notification of the required revisions. Respondent shall implement the Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any



subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement.

c. Respondent shall not commence any Work except in conformance with the terms of this Settlement Agreement. Respondent shall not commence implementation of the Work Plan developed hereunder until receiving written EPA approval pursuant to Paragraph 45.b.

46. Health and Safety Plan. Within 30 days after the Effective Date, Respondent shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-Site work under this Settlement Agreement. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.

47. Quality Assurance and Sampling.

a. Within 30 days after the Effective Date, Respondent shall submit for EPA review and comment a Quality Assurance/Quality Control Project Plan ("QAPP"), which shall be prepared in accordance with the Uniform Federal Policy for Implementing Quality Systems (UFP-QS), EPA-505-F-03-001, March 2005 or newer, Uniform Federal Policy for Quality Assurance Project Plans (UFP-QAPP), Parts 1, 2A and 2B, EPA-505-B-04-900A, B and C, March 2005 or newer, and other guidance documents referenced in the aforementioned guidance documents. The QAPP shall include the following elements:

- i. An explanation of the way(s) the sampling, analysis, testing, and monitoring will produce data;
- ii. A detailed description of the sampling, analysis, and testing to be performed, including sampling methods, analytical and testing methods, sampling locations and frequency of sampling;
- iii. A map depicting sampling locations; and
- iv. A schedule for performance of specific tasks.

In the event that additional sampling locations, testing, and analyses are utilized or required, Respondent shall submit to EPA an addendum to the QAPP for approval by EPA.

b. All sampling, analysis, data assessment, and monitoring shall be performed in accordance with the guidance provided at <http://www.epa.gov/fedfac/documents/qualityassurance.htm>, the guidance and procedures located in the EPA Region 2 DESA/HWSB web

site: <http://www.epa.gov/region02/qa/documents.htm>, other OSWER directives and EPA Region 2 policies, as appropriate, or an alternate EPA-approved test method, and the guidelines set forth in this Administrative Order. All testing methods and procedures shall be fully documented and referenced to established methods or standards.

i. The laboratory to be used must be specified. Any laboratory approved for the analytic service to be provided by one of the following programs: USEPA Contract Laboratory Program (CLP), National Environmental Laboratory Accreditation Program (NELAP), American Association for Laboratory Accreditation (A2LA), will not require project-specific Performance Evaluation ("PE") samples, as these programs require PEs on a quarterly basis.

ii. Unless indicated otherwise in the approved QAPP, upon receipt from the laboratory, all data shall be validated.

iii. Unless indicated otherwise in the QAPP, Respondents shall require deliverables equivalent to CLP data packages from the laboratory for analytical data. Upon EPA's request, Respondent shall submit to EPA the full documentation (including raw data) for this analytical data. EPA reserves the right to perform an independent data validation, data validation check, or qualification check on generated data and corresponding certificates of accreditation from the programs listed in Subparagraph i., above.

iv. Respondent shall ensure that, under its existing contracts, and any applicable new contracts entered into in order to complete the Work, EPA personnel and authorized representatives of the EPA will be provided access to the laboratory utilized for analyses of samples for ensuring the accuracy of laboratory results related to the Site.

c. For any analytical work performed, including that done in a fixed laboratory, in a mobile laboratory, or in on-site screening analyses, Respondent must submit to EPA a Non-CLP Superfund Analytical Services Tracking System form for each laboratory utilized during a sampling event, within thirty (30) days after acceptance of the analytical results. Upon completion, such documents shall be submitted to the EPA Regional Sample Control Center Coordinator, with a copy of the form and transmittal letter to:

Regional Sample Control Center Coordinator  
U.S. EPA, Region 2  
Division of Environmental Science & Assessment  
2890 Woodbridge Ave., Bldg. 209, MS-215  
Edison, NJ 08837

d. Upon request by EPA, Respondent shall have such a laboratory analyze samples submitted by EPA for QA monitoring. Respondent shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

e. Upon request by EPA, Respondent shall allow EPA or its authorized

representatives to take split and/or duplicate samples. Respondent shall notify EPA not less than 10 days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Respondent to take split or duplicate samples of any samples it takes as part of its oversight of Respondent's implementation of the Work.

f. Respondent will provide electronic submittals of sampling and geologic data in accordance with Region 2 policies, guidelines, and formats. The Region 2 Electronic Data Deliverable ("EDD") is a standardized format for all electronic submittals. Electronic submittals of sampling and geologic data will be made in accordance with the project schedule and in conjunction with the submittal of draft reports. Respondent is responsible for reviewing and approving any contractor work for consistency with Region 2 EDD requirements. The Region 2 EDD Guidance and Requirements include instruction manuals and data submission and validation files. The most recent EDD Guidance and Requirements can be found at: <http://www.epa.gov/region02/superfund/medd.htm>. Environmental data, as referred to above, are defined as any measurements or information that describe environmental processes, location, or conditions; ecological or health effects and consequences; or the performance of environmental technology. For EPA, environmental data include information collected directly from measurements, produced from models, and compiled from other sources such as data bases or the literature.

48. Post-Removal Site Control. In accordance with the Work Plan schedule, or as otherwise directed by EPA, Respondent shall submit a plan for post-removal site control consistent with Section 300.415(I) of the NCP and OSWER Directive No. 9360.2-02. Upon EPA approval, Respondent shall implement such controls and shall provide EPA with documentation of all post-removal site control arrangements. For those activities that are completed and will not be affected by or continued under a subsequent enforcement document, demobilization shall include sampling (where necessary) and proper disposal or decontamination of protective clothing, remaining laboratory samples taken under this Settlement Agreement, and any equipment, supplies or temporary structures constructed to facilitate the work under this Settlement Agreement.

49. Reporting.

a. Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement Agreement every 7th day after the date of receipt of EPA's approval of the Work Plan until termination of this Settlement Agreement, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

b. Respondent shall submit 3 copies of all plans, reports or other submissions required by this Settlement Agreement, or any approved work plan. Upon request by EPA, Respondent shall submit such documents in electronic form.

c. Respondent shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice to the transferee that the property is subject to this Settlement Agreement and written notice to EPA of the proposed conveyance, including the name and address of the transferee. Respondent also agrees to require that its successor comply with the immediately preceding sentence and Sections IX (Site Access) and X (Access to Information).

50. Final Report. Within 60 days after notification by EPA, Respondent shall submit for EPA review and approval a final report summarizing the actions completed and the status of any ongoing Work taken to comply with this Settlement Agreement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement Agreement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

"Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

51. Off-Site Shipments.

a. Respondent shall, at least ten (10) days prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management or recycling facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to the OSC. However, this state notification requirement shall not apply to any off-site shipments when the total volume of all such shipments will not exceed 10 cubic yards. The requirement to notify the OSC remains in effect.

i. Respondent shall include in the written notification the following information: 1) a description and quantity of the Waste Material to be shipped; 2) the name, address, phone number and EPA ID number of the receiving facility to which the Waste Material is to be shipped; 3) the treatment, disposal, recycling or other technology method for which the waste will be submitted; 4) the expected schedule for the shipment of the Waste Material; and 5) the method of transportation. Respondent shall notify the OSC and the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

ii. The identity of the receiving facility and state will be determined by Respondent following the award of the contract for the removal action. Respondent shall provide the information required by Paragraph 51.a.i. and 51.b. as soon as practicable after the award of the contract and before the Waste Material is actually shipped as required by Paragraph 51.a.

b. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Respondent shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent shall only send hazardous substances, pollutants, or contaminants from the Site to an off-Site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

#### **IX. SITE ACCESS**

52. If the Site, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by the Respondent, the Respondent shall, commencing on the Effective Date, provide EPA, and its representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Settlement Agreement.

53. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within 30 days after the Effective Date, or as otherwise specified in writing by the OSC. Respondent shall immediately notify EPA if after using their best efforts they are unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondent shall describe in writing their efforts to obtain access. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response actions described in this Settlement Agreement, using such means as EPA deems appropriate. Respondent shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XV (Payment of Response Costs). If Respondent is unable to obtain access agreements on its own using best efforts, Respondent may request that EPA extend applicable deadlines in this Settlement Agreement. Respondent may also request EPA to waive any stipulated penalties that may have accrued.

54. Notwithstanding any provision of this Settlement Agreement, EPA retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

#### **X. ACCESS TO INFORMATION**

55. Respondent shall provide to EPA, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to activities

at the Site or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondent shall also make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

56. Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Respondent that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondent.

57. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondent asserts such a privilege in lieu of providing documents, it shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by the Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged or confidential.

58. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

## **XI. RECORD RETENTION**

59. Until 10 years after Respondent's receipt of EPA's notification pursuant to Section XXIX (Notice of Completion of Work), Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Respondent shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work for 10 years following Respondent's receipt of EPA's notification pursuant to Section XXIX (Notice of Completion of Work).

60. At the conclusion of this document retention period, Respondent shall notify EPA at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA, Respondent shall deliver any such records or documents referenced in Paragraph 59 to EPA. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege, it shall provide EPA with the following: a) the title of the document, record, or information; b) the date of the document, record, or information; c) the name and title of the author of the document, record, or information; d) the name and title of each addressee and recipient; e) a description of the subject of the document, record, or information; and f) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged or confidential.

61. Respondent hereby certifies that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any records, documents, or other information (other than identical copies) relating to its potential liability regarding the Site since the earlier of notification of potential liability by EPA or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

## **XII. COMPLIANCE WITH OTHER LAWS**

62. Respondent shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable state and federal laws and regulations, except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws. Respondent shall identify ARARs in the Work Plan subject to EPA approval.

## **XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES**

63. In the event of any action or occurrence during performance of the Work that causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC or, in the event of his/her unavailability, notification should be made to the Chief of the Removal Action

Branch of the Emergency and Remedial Response Division of EPA, Region 2, at (732) 321-6658. In the event that Respondent fails to take appropriate response actions as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XV (Payment of Response Costs).

64. In addition, in the event of any release of a hazardous substance from the Site, Respondent shall immediately notify the OSC and the National Response Center at (800) 424-8802. Respondent shall submit a written report to EPA within 7 days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

#### **XIV. AUTHORITY OF ON-SCENE COORDINATOR**

65. The OSC shall be responsible for overseeing Respondent's implementation of this Settlement Agreement. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement Agreement. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

#### **XV. PAYMENT OF RESPONSE COSTS**

##### **66. Payments for Future Response Costs.**

a. Respondent shall pay EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, EPA will send Respondent a bill requiring payment that includes a SCORPIOS Report. Respondent shall make all payments within 30 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 68 of this Settlement Agreement.

b. Respondent shall make all payments required by this Paragraph by Electronic Funds Transfer ("EFT") as set forth below:

- i. EFT to be directed to: **Federal Reserve Bank of New York**
- ii. ABA Routing Number for Federal Reserve Bank of New York: **021030004**
- iii. Federal Reserve Bank of New York account number receiving payment: **68010727**
- iv. SWIFT address: **FRNYUS33**
- v. Address: **Federal Reserve Bank of New York**  
**33 Liberty Street**  
**New York, NY 10045**
- vi. Field Tag 4200 of the Fedwire message to read:  
**D68010727 Environmental Protection Agency**
- vii. Case Number: **CERCLA-02-2011-2015**
- viii. Amount of payment:



- ix. Name of Remitter:
- x. Site/Spill identifier: **022H**

c. To ensure that the payment is properly recorded, Respondent should send an email or a letter within one week of the EFT, which references the date of the EFT, the payment amount, the name of the Site, the Site ID number (022H), the case number, and the Respondent's name and address to:

Mr. Richard Rice  
US EPA  
Attention: FINANCE  
MS:NWD  
26 W. Martin Luther King Dr.  
Cincinnati, OH 45268

Email (to both) [acctsreceivable.cinwd@epa.gov](mailto:acctsreceivable.cinwd@epa.gov) and to [rice.richard@epa.gov](mailto:rice.richard@epa.gov)  
Notice should also be sent to the designated EPA OSC via email or letter.

67. Interest. In the event that the payments for Future Response Costs are not made within 30 days of Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVIII.

68. Respondent may contest payment of any Future Response Costs billed under Paragraph 66 if it determines that EPA has made a mathematical error, or included a cost item that is not within the definition of Future Response costs, or if it believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the OSC. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Respondent shall within the 30-day period pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 66. Simultaneously, Respondent shall establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation ("FDIC"), and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondent shall send to the EPA OSC a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Respondent shall initiate the Dispute Resolution procedures in Section XVI (Dispute Resolution). If EPA prevails in the dispute, within 5 days of the resolution of the dispute, Respondent shall pay the sums due (with accrued interest) to

EPA in the manner described in Paragraph 66. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to EPA in the manner described in Paragraph 66. Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XVI (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse EPA for its Future Response Costs.

#### **XVI. DISPUTE RESOLUTION**

69. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally.

70. If Respondent objects to any EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, it shall notify EPA in writing of its objection(s) within 10 days of such action, unless the objection(s) has/have been resolved informally. EPA and Respondent shall have 14 days from EPA's receipt of Respondent's written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

71. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by both parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the Division Director level or higher will issue a written decision on the dispute to Respondent. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Respondent's obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

#### **XVII. FORCE MAJEURE**

72. Respondent agrees to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, a *force majeure* is defined as any event arising from causes beyond the control of Respondent, or of any entity controlled by Respondent, including but not limited to their contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Respondent's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work, increased cost of performance, or a failure to attain performance standards/action levels set forth in this Settlement Agreement and the Work Plan provided for in Paragraph 44.

73. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondent shall notify EPA orally within 2 days of when Respondent first knew that the event might cause a delay. Within 7 days thereafter, Respondent shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a *force majeure* event if it intends to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

74. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Respondent in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

#### **XVIII. STIPULATED PENALTIES**

75. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 76 and 77 for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section IX (Site Access) or Section XVII (Force Majeure). "Compliance" by Respondent shall include completion of the activities under this Settlement Agreement or any work plan or other plan approved under this Settlement Agreement identified below in accordance with all applicable requirements of law, this Settlement Agreement, and any plans or other documents approved by EPA pursuant to this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

##### **76. Stipulated Penalty Amounts - Work.**

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 76(b):

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$1,000	1st through 7th day
\$1,500	8th through 15th day
\$3,000	16th through 25th day

\$3,500

31st day and beyond

b. Compliance Milestones

1. Submission of draft Work Plan.
2. Completion of the investigation and studies required by Paragraphs 43.a., c., and d as provided in the Work Plan Schedule pursuant to Paragraph 44.
3. Construction of a system to block, intercept and capture the contaminated groundwater which is seeping into the Raritan River pursuant to Paragraph 43.b as provided in the Work Plan Schedule pursuant to Paragraph 44.

77. Stipulated Penalty Amounts - Reports. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate studies, plans, reports or EPA approved schedules not addressed in Paragraphs 76:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$250	1st through 7th day
\$500	14th through 15th day
\$1,000	16th through 25th day
\$1,500	31st day and beyond

78. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 88 of Section XX, Respondent shall be liable for a stipulated penalty in the amount of \$500,000. Any penalty assessed against Respondent under this Paragraph shall be reduced, if appropriate, by the percentage of Work completed by Respondent.

79. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and 2) with respect to a decision by the EPA Management Official at the Division Director level or higher, under Paragraph 71 of Section XVI (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA management official issues a final decision regarding such dispute. Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

80. Following EPA's determination that Respondent has failed to comply with a requirement of this Settlement Agreement, EPA may give Respondent written notification of the failure and describe the noncompliance. EPA may send Respondent a written demand for payment

of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondent of a violation.

81. All penalties accruing under this Section shall be due and payable to EPA within 30 days of Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Section XVI (Dispute Resolution).

a. Respondent shall make all payments required by this Section by Electronic Funds Transfer ("EFT") as set forth below:

- i. EFT to be directed to: **Federal Reserve Bank of New York**
- ii. ABA Routing Number for Federal Reserve Bank of New York: **021030004**
- iii. Federal Reserve Bank of New York account number receiving payment: **68010727**
- iv. SWIFT address: **FRNYUS33**
- v. Address: **Federal Reserve Bank of New York**  
**33 Liberty Street**  
**New York, NY 10045**
- vi. Field Tag 4200 of the Fedwire message to read:  
**D68010727 Environmental Protection Agency**
- vii. Case Number: **CERCLA-02-2011-2015**
- viii. Amount of payment:
- ix. Name of Remitter:
- x. Site/Spill identifier: **022H**

b. To ensure that the payment is properly recorded, Respondent should send an email or a letter within one week of the EFT, which references the date of the EFT, the payment amount, the name of the Site, the Site ID number (022H), the EPA Docket number, and the Respondent's name and address to:

Mr. Richard Rice  
US EPA  
Attention: FINANCE  
MS:NWD  
26 W. Martin Luther King Dr.  
Cincinnati, OH 45268

Email (to both) [acctreceivable.cinwd@epa.gov](mailto:acctreceivable.cinwd@epa.gov) and to [rice.richard@epa.gov](mailto:rice.richard@epa.gov)  
Notice should also be sent to the designated EPA OSC via email or letter.

82. The payment of penalties shall not alter in any way Respondent's obligation to complete performance of the Work required under this Settlement Agreement.

83. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until 15 days after the dispute is resolved by agreement or by receipt of EPA's decision.

84. If Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 81. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) or 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Section, except in the case of a willful violation of this Settlement Agreement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XX, Paragraph 88 (Work Takeover). Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

#### **XIX. COVENANT NOT TO SUE BY EPA**

85. In consideration of the actions that will be performed and the payments that will be made by Respondent under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work and Future Response Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondent of all obligations under this Settlement Agreement, including, but not limited to, payment of Future Response Costs pursuant to Paragraph 66 (Payments for Future Response Costs). This covenant not to sue extends only to Respondent and does not extend to any other person.

#### **XX. RESERVATIONS OF RIGHTS BY EPA**

86. Except as specifically provided in this Settlement Agreement, nothing in this Settlement Agreement shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing in this Settlement Agreement shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

87. The covenant not to sue set forth in Section XIX above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement Agreement is

without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

- a. claims based on a failure by Respondent to meet a requirement of this Settlement Agreement;
- b. liability for costs not included within the definition of Future Response Costs;
- c. liability for performance of response action other than the Work;
- d. criminal liability;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and
- g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

88. Work Takeover. In the event EPA determines that Respondent has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Respondent may invoke the procedures set forth in Section XVI (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Respondent shall pay pursuant to Section XV (Payment of Response Costs). Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

## **XXI. COVENANT NOT TO SUE BY RESPONDENT**

89. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Future Response Costs, or this Settlement Agreement, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. §9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of the Work at the Site, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. §1491, the Equal Access to Justice Act, 28 U.S.C. §2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§9607 and 9613, Section 7002(a) of RCRA, 42 U.S.C. §6972(a), or state law relating to the Work, or Future Response Costs.

90. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. §9611, or 40 C.F.R. §300.700(d).

## **XXII. OTHER CLAIMS**

91. By issuance of this Settlement Agreement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be deemed a party to any contract entered into by Respondent or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

92. Except as expressly provided in Section XIX (Covenant Not to Sue by EPA), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

93. No action or decision by EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

## **XXIII. EFFECT OF SETTLEMENT/CONTRIBUTION**

94. Nothing in this Settlement Agreement precludes the United States or Respondent from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not parties to this Settlement Agreement. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

95. The Parties agree that this settlement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), or as may be



otherwise provided by law, for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work and Future Response Costs. The Parties further agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. §9613(f)(3)(B), pursuant to which Respondent has, as of the Effective Date, resolved its liability to the United States for the Work and Future Response Costs.

96. Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement Agreement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Respondent also shall, with respect to any suit or claim brought against it for matters related to this Settlement Agreement, notify EPA in writing within 10 days of service of the complaint or claim upon it. In addition, Respondent shall notify EPA within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

97. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant by EPA set forth in Section XIX.

#### **XXIV. INDEMNIFICATION**

98. Respondent shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, their officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondent agrees to pay the United States all costs incurred by the United States, including but not limited to attorneys' fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, their officers, directors, employees, agents, contractors, subcontractors and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Settlement Agreement. Neither Respondent nor any such contractor shall be considered an agent of the United States.

99. The United States shall give Respondent notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.

100. Respondent waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

#### **XXV. INSURANCE**

101. At least 7 days prior to commencing any on-site work under this Settlement Agreement, Respondent shall secure, and shall maintain for the duration of this Settlement Agreement, comprehensive general liability insurance with limits of three million dollars, combined single limit, and automobile insurance with limits of one million dollars, combined single limit, naming EPA as an additional insured. Within the same time period, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondent shall submit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement Agreement, Respondent shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Settlement Agreement. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

#### **XXVI. FINANCIAL ASSURANCE**

102. Within 30 days of the Effective Date, Respondent shall establish and maintain financial security for the benefit of EPA in the amount of \$2,800,000 in one or more of the following forms, in order to secure the full and final completion of Work by Respondent:

- a. a surety bond unconditionally guaranteeing payment and/or performance of the Work;
- b. one or more irrevocable letters of credit, payable to or at the direction of EPA, issued by financial institution(s) acceptable in all respects to EPA;
- c. a trust fund administered by a trustee acceptable in all respects to EPA;
- d. a policy of insurance issued by an insurance carrier acceptable in all respects to EPA, which ensures the payment and/or performance of the Work;

e. a written guarantee to pay for or perform the Work provided by one or more parent companies of Respondent, or by one or more unrelated companies that have a substantial business relationship with the Respondent; including a demonstration that any such guarantor company satisfies the financial test requirements of 40 C.F.R. Part 264.143(f); and/or

f. a demonstration of sufficient financial resources to pay for the Work made by Respondent, which shall consist of a demonstration that the Respondent satisfies the requirements of 40 C.F.R. Part 264.143(f).

The financial assurance instruments mentioned above in Paragraph 102 a-f., should be provided to the Division Director of the ERRD, EPA-Region 2 and should reference the American Cyanamid Superfund Site.

103. Any and all financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to EPA, determined at EPA's sole discretion. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section (including, without limitation, the instrument(s) evidencing such assurances) are inadequate, Respondent shall, within 30 days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 102, above. In addition, if at any time EPA notifies Respondent that the anticipated cost of completing the Work has increased, then, within 30 days of such notification, Respondent shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. Respondent's inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Settlement Agreement.

104. If Respondent seeks to ensure completion of the Work through a guarantee pursuant to Subparagraph 102.e. or 102.f. of this Settlement Agreement, Respondent shall (a) demonstrate to EPA's satisfaction that the guarantor satisfies the requirements of 40 C.F.R. Part 264.143(f); and (b) resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the Effective Date or such other date as agreed by EPA, to EPA. For the purposes of this Settlement Agreement, wherever 40 C.F.R. Part 264.143(f) references "sum of current closure and post-closure cost estimates," the dollar amount to be used in the relevant financial test calculations shall be the current cost estimate of \$2,800,000 for the Work at the Site plus any other RCRA, CERCLA, TSCA, or other federal environmental obligations financially assured by the relevant Respondent or guarantor to EPA by means of passing a financial test.

105. If, after the Effective Date, Respondent can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 102 of this Section, Respondent may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining Work to be performed. Respondent shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security after receiving written approval from EPA. In the event of a dispute, Respondent may seek

dispute resolution pursuant to Section XVI (Dispute Resolution). Respondent may reduce the amount of security in accordance with EPA's written decision resolving the dispute.

106. Respondent may change the form of financial assurance provided under this Section at any time, upon notice to and prior written approval by EPA, provided that EPA determines that the new form of assurance meets the requirements of this Section. In the event of a dispute, Respondent may change the form of the financial assurance only in accordance with the written decision resolving the dispute.

#### **XXVII. MODIFICATIONS**

107. The OSC may make modifications to any plan or schedule or Statement of Work in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the parties.

108. If Respondent seeks permission to deviate from any approved work plan or schedule, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 107.

109. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

#### **XXVIII. NOTICE OF COMPLETION OF WORK**

110. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including but not limited to, post-removal site controls, Work activities pursuant to Paragraph 43. h., payment of Future Response Costs, or record retention, EPA will provide written notice to Respondent. If EPA determines that such Work has not been completed in accordance with this Settlement Agreement, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan if appropriate in order to correct such deficiencies. Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

#### **XXIX. INTEGRATION/APPENDICES**

111. This Settlement Agreement and Appendix A constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendix is attached to and incorporated into this Settlement Agreement: Appendix A - Photographs of Site.


#### **XXX. EFFECTIVE DATE**

112. This Settlement Agreement shall be effective on the day on which this Settlement Agreement is served upon counsel for Respondent via either facsimile or email after this Settlement Agreement is signed by the Division Director of the Emergency and Remedial Response Division of EPA, Region 2 or his delegatee.

The undersigned representative(s) of Respondent certify(ies) that he (they) is (are) fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the party he (they) represent(s) to this document.

Agreed this 19<sup>th</sup> day of July, 2011.

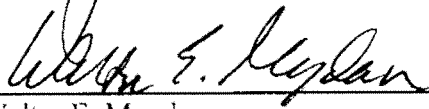
For Respondent:

  
Signature

Steven F. Kemp  
Print Name

Vice President – Wyeth Holdings Corporation  
Title

It is so ORDERED and Agreed this 19<sup>th</sup> day of July, 2011.



Walter E. Mugdan

Director, Emergency and Remedial Response Division  
U.S. Environmental Protection Agency, Region 2

## APPENDIX A





FIGURE X



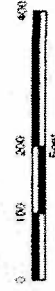
LEGEND

- Seep Point
- Seep Line
- Still Gauge
- MONITORING WELL
- MW

DRAFT

PFIZER INC.  
FORMER AMERICAN CYANAMID  
BRIDGEWATER, NJ

IMPOUNDMENTS 1&2  
SAMPLE LOCATIONS



JANUARY 2011  
PAGE 105



This document was prepared in error. Reproduction of this document represents the fact as intended.